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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5414 OF 2007

Hindustan Lever Research Centre
Employees' Union ... Petitioner

v/s

Hindustan Lever Ltd. & ors. ... Respondents

Mrs. Meena Doshi with Ms. Jane Cox for the petitioner.

Mr. K.M. Naik with Mr. S.P. Salkar for the respondents.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 23RD AUGUST, 2007.

ORAL JUDGMENT:

. Rule, returnable forthwith.

1. This petition challenges the order of the President of the Industrial Court refusing to transfer Reference (IT) No. 21 of 2001 from the file of the Tribunal who is presently seized with the matter to the Court of Shri A.D. Kadlag, Member, Industrial Tribunal, Mumbai.

2. The petitioner contends that the issue of parity, which has been recognised by this Court in respect of the workers in Reference (IT) Nos. 83 of 1997, 51 of 1998 and 56 of 1999 also arises in Reference (IT) No. 21 of 2001 and, therefore, it would be appropriate to club all four references together. It is further contended that

if clubbing of the four references is not possible, then Reference (IT) No. 21 of 2001 should be decided by the same Tribunal who is seized of the other three references as the questions of fact and law in all four references are the same. The petitioner urges that in order to save time and avoid duplication of work as also the possibility of incongrous decisions by two different tribunals, it is necessary to have all references decided by one Industrial Tribunal.

3. Before proceeding on the merits of the controversy it would be necessary to advert to the preliminary objections raised by Mr. Naik, appearing for the respondent Company, that: (i) the impugned order is an administrative order and, therefore, the petition lies before the Division Bench and not before the Single Judge; (ii) if it is held that it lies before the Division Bench, the matter should be sent to the Division Bench on the Original Side of this Court. Mr. Naik contends that the order passed by the President of the Industrial Court is passed by him as a delegate of the appropriate Government. The powers which are exercised by the President of the Industrial Court, are delegated to him under Section 39 of the Industrial Disputes Act (for short "the Act"). Under Section 33B of the Act, it is the Government who can transfer proceedings to another

Industrial Tribunal and the President merely acts as a delegate of the Government while deciding the transfer application. It is submitted that, since the Government exercises an administrative power, the President of the Industrial Court, acting under Section 33B also performs an administrative act and, therefore, the matter should be decided by the Division Bench. Mr. Naik has relied upon several judgments in support of his contention that the order must be challenged before the Single Judge. He submits that, if no malafides are attributed to the Tribunal for seeking the transfer, then the President passes an order which is administrative in nature and not quasi judicial. He further submits that the rights of parties are not decided by the impugned order and, therefore, it is an administrative order.

4. As against this, the learned advocate Mrs. Doshi appearing for the petitioners points out the judgments in the case of **Workmen of Punjab Worsted Spinning Mills, Chheharta v/s State of Punjab and others, reported in 1965 II L.L.J. 218** in support of her contention that the matter lies before the Single Judge. She submits that the order passed by the President is a quasi judicial order. The Punjab High Court was concerned with the order passed by the State Government transferring a reference from one Tribunal to another. The learned

Single Judge of the Punjab High Court has observed thus -

> "I am, however, of the view that even if the State Government has any such power, in exercising it, it must be deemed to be acting in a quasi-judicial manner and it cannot transfer a case on such allegation made on behalf of one of the parties without giving a reasonable opportunity to the other party to represent its point of view and thus the order would be invalid and must be struck down for having violated the principles of natural justice."

She places reliance on the judgment of the Delhi High Court in the case of **Lt.Governor, Delhi Administration, Delhi & anr. v/s Management of M/s. Blue Star Engineering Co. (Bombay) Pvt. Ltd., reported in 1973 Lab.I.C. 754,** wherein the Division Bench of the Delhi High Court was concerned with the nature of the powers exercised under Section 33-B. The Division Bench dismissed the appeal by upholding the findings of the learned Single Judge. In para 6, the Court has observed thus -

> "6. The contention urged on behalf of the appellants is that the order of transfer was an administrative and not a quasi-judicial order

and therefore it was not necessary to issue any notice to the Management of respondent No.1 before the order was made. Learned Single Judge has however held that the impugned order was a quasi-judicial order and as such it was liable to be quashed because it was passed without giving an opportunity to the other side to be heard regarding the allegations made by the Workmen's Union. The learned Judge observed:-

"Orders under Section 33-B themselves may be either administrative or quasi-judicial according to the context. An order transferring one industrial dispute from one Labour Court to another for purely administrative reasons, such as a transfer of the concerned officer or in order to redistribute the work between different officers, and it is so stated in the order of transfer itself, would be purely administrative and could not be said to be quasi judicial. On the other hand, if as in the present case, when proceedings are pending before a Labour Court and evidence is actually being recorded by that Court any transfer from that Court to another on the ground that the presiding officer was prejudiced against one of parties must obviously be made after notice to the other side. Propriety and fairness would require that the concerned judicial officer should not only be apprised of what is stated against him but also must be given an opportunity of making his own comments on such allegations. To state that it would be embarrassing for the said officer and, therefore, it would be better not to ask for his comments would be to take away from such quasi-judicial proceedings of much of their solemnity and effectiveness. It seems, therefore, that the order of transfer in the instant case was a quasi-judicial order and that the same is liable to be quashed because it was passed without even giving any opportunity to the other side (the management) to be heard regarding such allegations."

5. Thus, it is clear that the nature of the power exercised by the President, as a delegate of the

appropriate Government is quasi judicial and both parties are required to be heard before any order is passed.

6. Rule 18 of Chapter 17 of the Bombay High Court (Appellate Side) Rules deals with the powers of the Single Judge to dispose of applications under Article 226 and 227. Clause (9) of Rule 18 permits the Single Judge to decide matters pertaining to orders passed under the Industrial Disputes Act. The explanation to Rule 18 reads thus -

> "**Explanation.**- The expression "order" appearing clause (1) to (41) means any order passed by any judicial or quasi judicial authority empowered to adjudicate under the above mentioned statutes."

7. In my view, the provisions of Chapter XVII Rule 18 sub-clause (9) read with the Explanation make it clear that a writ petition impugning an order passed by the President of the Industrial Court under Section 33-B can be entertained by a Single Judge of this Court as it is a quasi judicial order. Apart from this, as aforesaid, the Explanation makes it clear that it is not the nature of the order which is relevant but the authority who passes

the order. The authority should be a quasi-judicial or judicial. The President of the Industrial Court is certainly such an authority and, therefore, the writ petition is maintainable before the Single Judge.

8. Thus, it is clear that the nature of the power exercised by the President, as a delegate of the appropriate Government is quasi judicial and both parties are required to be heard before any order is passed.

9. Turning to the merits of the controversy before me, the petitioner contends that historically there has been parity between all the units of the respondent Company in Mumbai. According to the petitioner, the F.C.U. was established in 1968 and the manpower for this unit was absorbed from other units of the Company including the Head Office, Mumbai Factory, Development Department and the Research Centre. It is contended that, time and again various awards and settlements which governed other units have been extended to the F.C.U. The benefits of these awards and settlements were extended to the F.C.U. either by agreements or by orders of various Courts. The workmen concerned in the present Reference No.21 of 2001 are the hourly rated workmen in the F.C.U. According to

the petitioner, the parity between the Sewri Factory, Research Centre and Mumbai Office has been recognised by this Court. The Shivankar Award which was passed in Reference (IT) Nos. 83 of 1997, 51 of 1998 and 56 of 1999, was in respect of the hourly rated workmen of the Head Office, Mumbai Factory, Development Department and the Research Centre of the Company. The Shivankar Award was challenged by both, the Company and the Union in this Court by filing several writ petitions. All the writ petitions were disposed of by a common judgment by Radhakrishnan, J. on 29.10.2002. According to the petitioner, this judgment recognises that there is parity between the units of the Company. The judgment also notes that by a settlements of 7.7.1977, 12.6.1999 and 8.11.1983, the awards/settlements in respect of hourly rated and subordinate staff of the Mumbai Factory were extended to the hourly rated staff in the Research Centre and Fine Chemical Unit, both of which are located in Andheri. By his judgment, Radhakrishnan, J. has remanded the references to the Tribunal for a fresh hearing. These references are pending before Shri Kadlag. Reference (IT) No. 21 of 2001 which relates to the F.C.U. is pending before another Industrial Tribunal. It is, in these circumstances, that the petitioner prays that Reference (IT) No.21 of 2001 be clubbed together with other references or be heard by the

same Tribunal.

10. The respondent Company has vehemently opposed the transfer application on several grounds; the main ground being that there is no parity between the FCU workers and the workers involved in the other three Units. It is submitted that the wage scales and service conditions of the FCU have always been different and, therefore, there is no need to transfer the proceedings from one Tribunal to the other. It is also submitted that no such application had been preferred earlier although the reference was pending since the year 2001. The Shivankar Award was passed on 31st December, 2003. According to the respondent Company, the parity exists only in relation to common allowances and that the Union has always disputed the existence of parity with the other Units. It is, in these circumstances, the Company has contested the application made on behalf of the Union for a transfer.

11. The President of the Industrial Court has rejected the transfer application by concluding that the question of parity raised in Reference (IT) No. 21 of 2001 by the Union, has to be decided independently. The three other references are not connected with Reference (IT) No. 21 of 2001. There is no common question of law or fact

involved in the four matters according to the President of the Industrial Court and, therefore, it has refused to club the references together.

12. Mrs. Doshi, learned counsel appearing for the petitioners points out that the respondent Company has all along been harping on the fact that the workers of the four Units should be treated equally and that there was parity in the service conditions of the workman of these Units. She points out that all benefits which were given to the workers involved in the aforesaid three references were extended to the workers covered by Reference (IT) No. 21 of 2001 from time to time. She then brings to my notice an application made by the Union seeking interim relief in Reference (IT) No. 21 of 2001. This application was filed praying that the benefits of the Shivankar Award should be extended to the workmen concerned in Reference (IT) No. 21 of 2001 by way of an interim relief. The Tribunal rejected this application and the petitioners challenged it in this Court. The order was set aside by this Court on 4.4.2006 giving opportunity to the petitioners to move a fresh application to seek interim relief. Therefore the Union moved a separate application for interim relief and prayed that subject to the final award, all benefits of the Shivankar award in Reference (IT) No. 51 of 1998

which were extended to the hourly rated workmen employed in the Bombay factory, should be extended from the same date and in the same manner to the 42 hourly rated workmen employed in the FCU. This application was opposed by the Company.

13. The judgment of Radhakrishnan, J. dated 29/10/2002 in Writ Petition No. 1335 of 1995 and connected writ petitions indicates that the writ petitions were in respect of three establishments in Mumbai i.e. (a) the Head Office at Backbay Reclamation, (b) Factory at Sewri and the Development Department which was formerly located at Sewri and now relocated at Andheri and (c) Research Centre at Andheri. Admittedly, the F.C.U. is the same as the Development Department which is now located in Andheri. It has been observed by the learned Judge that historically there was parity between the Fine Chemical Unit at Andheri and other units of the Company in Mumbai. The objection raised by the learned counsel for the Company before the Court was negatived by Radhakrishnan, J. as follows:-

> "57. Mr. Rele's objection that there was no evidence to substantiate the grant of parity. This argument is also totally baseless, inasmuch as from 1952 till 1993 as pointed out hereinabove, consistently the parity has been followed. The evidence before the Industrial Tribunal, various Awards starting from Thakore Award and culminating in the Division Bench

> order, in all the stages, the parity has been followed and in every stage in the settlements between the employer and the employees' Union such a parity has been followed. Therefore to say that there is no evidence before the Industrial Court to adopt the principle of parity is also totally unsustainable, hence this objection is also baseless."

14. Prima facie, therefore, there appears to be parity between all the concerns. Admittedly, the Company has been extending the benefits available to the workmen in their other units to the workmen employed in the F.C.U., recognising the fact that many of the workmen had been transferred from the other units to the F.C.U. In these circumstances, the Union rightly sought a transfer of Reference (IT) No. 21 of 2001 pending before the one Industrial Tribunal to the Court where the other three references were pending. Parity is an issue which would have to be decided by the Tribunal in each of these references. That being the position, it would be in the fitness of things to have all references decided by one Tribunal. The facts in all the references, the financial position of the Company, the industry-cum-region formula and several other factors would be common in each of the references.

15. In the case of **Vaman Vasudeo Chitaley v/s Raghunath Ganesh, reported in A.I.R. (36) 1949 Bom. 263,** the Division Bench of this Court has observed that, when the

true construction of an agreement entered into by parties was involved in suits filed in two different courts, one in Pune and the other in Bombay, it was desirable to avoid different conclusions on the construction of the same agreement by different courts. This was a consideration in favour of the transfer of the two suits to one Court. The Division Bench also observed that the question of convenience was also relevant though not a decisive consideration in order to decide whether matters should be transferred from one Court to another Court.

16. Similarly, in the case of **Pitambar Padhi & anr. v/s Smt. Santilata Padhi & ors., reported in A.I.R. 1987 Orissa 45,** the learned Single Judge of the Orissa High Court has observed that, when two suits raise common questions of fact and law having substantial bearing on the decision of each of the cases, it is desirable that they should be tried at the same place and by the same Judge. It was also necessary in order to avoid multiplicity in the trial of the same issues and conflict of decisions. The balance of convenience having regard to all the circumstances of the suit is also a relevant factor to be considered for transferring the matter from one Court to the other.

17. On the other hand, Mr. Naik, learned counsel for the respondents submits that transfer is not a subject which should be considered lightly by granting it just for the asking. He submits that, in the case of **HST Hegde v/s Premier Automobiles Ltd., reported in 2000 (3) LLN 127,** the Single Judge of this Court has observed in para 6 thus:

> "6. The power exercisable by the appropriate Government or for that matter, the authority having been delegated with such power for transfer of certain proceedings pending before one Labour Court to another Labour Court has also to be exercised for good reasons. The said reasons must justify the transfer of proceedings from one Labour Court to another Labour Court. The power of transfer of proceedings cannot be exercised by the authority concerned under S.33B merely because he chooses it to do so. The transfer of proceedings from one Court to the other is done in rare cases and in special circumstances where the authority exercising the power of transfer is of the view that unless the matter is transferred that may lead to injustice to one of the parties. The transfer of case from one Court to the other is a serious matter, because it indirectly casts doubt on the integrity or competence of the Judge from whom the matter is transfer. Such order of transfer, therefore, can only be passed when the transferring Court or authority finds a proper and sufficient cause. The said cause or the reasons for transfer must be clearly set out in the order. Though the power of the Industrial Court under S.45 of M.R.T.U. & P.U.L.P. Act and the appropriate Government or the delegated authority under S.33B of Industrial Disputes Act is discretionary power, exercise of which cannot be put within the strait-jacket or cast iron for all the situation but it goes without saying that the concerned Industrial Court of the appropriate Government or the authority exercising such

> power of transfer of proceedings must record valid reasons for the transfer of the case."

18. In my view, the pleadings disclose prima facie that the respondent Company has been considering all their employees at par. It appears from the record that the Company had willy-nilly extended the benefits of the awards and settlements pertaining to the head office, Bombay factory and Research Centre to the F.C.U. In these circumstances, the President of the Industrial Tribunal was incorrect in dismissing the application filed by the Union. Besides this, a transfer of the proceedings to one Court where the other references are pending would avoid multiplicity of proceedings in two different Tribunals. The possibility of different findings by two different Tribunals on the issue of parity would lead to incongrous results. It would therefore be advantageous to have all four references decided by one Tribunal. Although Reference (IT) No. 21 of 2001 has proceeded and two witnesses of the Union have already been examined, it would be appropriate to transfer the Reference to Shri Kadlag so that one Tribunal would decide the issue of parity regarding all Units. The Tribunal would decide whether there was in fact any parity between FCU and the other units while deciding the references. This would obviate the necessity for prolix arguments from either side in

respect of each reference. The other reason for the transfer is that, all references would be decided by one Judge at the same time avoiding the possibility of inconsistent findings.

19. In such circumstances, in my opinion, the order impugned must be set aside. The President of the Industrial Court shall transfer the Reference (IT) No. 21 of 2001 to the Court of Shri Kadlag, Member, Industrial Tribunal, Mumbai.

20. Rule made absolute with costs.

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